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Comments of BP Wind Energy North America Inc. (BP Wind Energy) on the U. S. Fish and Wildlife Service's (Service) Draft Land-Based Wind Energy Guidelines (Guidelines)

I. Summary

- BP Wind Energy supports voluntary adherence to Guidelines, providing both clarity and flexibility that would serve as evidence of due care in avoiding, minimizing and mitigating significant adverse effects to legally protected species.
- Final Guidelines need to reflect a balancing of two, key, compatible Administration goals, articulated by the President and Secretary Salazar: Species and habitat protection, conservation and enhancement; and rapid development of clean, renewable energy.
- We have supported the Turbine Guidelines Advisory Committee's (FAC) recommendations and are satisfied these were taken into account by the Service and served as "a basis" of the current draft.
- The Service made a good faith effort based on their current understanding of the U.S. wind industry and its impact on species and habitat.
- However, the Guidelines are not yet in a form that can promote achievement of the nation's conservation *and* renewable energy policy goals.

- BP Wind Energy wishes to offer assistance and extensive experience to help refine the Guidelines as the process moves forward and keep industry focused on major issues.
- After the public comments received by May 19 are taken into account by the Service, we suggest that the Service seek a second set of public comments on the Guidelines before they are finalized.

The Impact of Wind Energy Development on the Environment

- Wind power generation, once operational, is a free energy source that produces no GHG emissions, uses very little water and produces very little in the way of air pollution or hazardous wastes, so natural resources are actually conserved and protected.
- We acknowledge that wind energy generation impacts birds, bats and other species, but we also believe the relative impact of wind development on those species to be small.
- While we do not question the Service's focus on the wind industry, we question the relative intensity of that focus.

Wind Industry Developers Have Been Responsive in Addressing Wildlife and Habitat Issues

- The U.S. wind energy business has been responsive to wildlife and habitat concerns that it has been asked to consider and address.
- BP Wind Energy voluntarily and pro-actively engages in continued outreach with affected stakeholder groups on possible environmental impacts.

- BP Wind Energy has forgone development of sites that it believed posed real risks to species and habitat.
- BP Wind Energy has either helped to form or joined several organizations as part of species and habitat protection efforts including the American Wind and Wildlife Institute (“AWWI”), an industry-NGO partnership that is becoming a primary source of wind farm siting solutions.

Guidelines Will Affect Financing of Wind Development Projects

- The viability of a still new and vulnerable industry is affected by uncertain regulatory regimes. Clear regulations, consistently applied, are critical for companies and their financial lenders to reach an acceptable comfort level in evaluating their risks and costs.
- Internally, BP Wind Energy must vie with other BP Group investment opportunities. Externally, wind developers are impacted by increasing competition for limited investment and venture capital driving down the return available from investment in wind energy. With investment capital so scarce, adding further uncertainty to the returns available will drive remaining capital to other, more attractive investments.
- BP’s risk is syndicated where possible to joint venture partners and banks to secure debt financing arrangements. Our partners and investors seek to minimize their risk through regulatory certainty. They are likely to avoid projects that do not carry enforcement assurance and will assume that without it, the project cash flow is vulnerable.
- Lender uncertainty over possible operational curtailments or physical changes to wind facilities after construction is completed is likely to result in more reserve requirements, reduction in debt loaned, or even refusal to lend.

- Even if Guidelines are voluntary, major developers seeking joint venture partners and bank financing will be under pressure to adhere to them regardless of cost.
- We need to ensure that the cost of capital is not raised to the point where major developers and investors will not be attracted to invest in renewable development, or are unable to justify the investment to shareholders and investors.

3 Years of Preconstruction Studies/ Minimum 2 Years of Post-Construction Studies

- Concern over the 3 year period as a default preference; The Service should explicitly recognize cases where a year of monitoring or even no monitoring is appropriate, based on risk.
- Concern over the value of data developed as the result of the choice, seemingly arbitrary, of a three year period (or a two year period in the case of post-construction studies).
- Study length should be based instead upon the risk profile of a proposed site and have a scientific underpinning.
- Service should develop a more streamlined and transactional approach where developers come to the Service on a case-by-case basis to determine what is appropriate for each site given actual, project-specific risk to species of concern.
- Given the current budgetary climate, a “minimum” of two years of post construction monitoring for low risk sites also would often not be a good use of the Service’s and developers’ limited resources. The Service should take a case-by-case approach. Focus should be site-specific, based on site-specific data, and tied to the level of actual risk to populations of species of concern.

Scope of the Guidelines

- Expansion of the scope to include “fish, wildlife and their habitats” leaves industry seeking greater precision with respect to the species involved.
- Focus should be on populations of “species of concern.” Benefits to be gained and knowledge gleaned from expanding review to all species is not clear.
- Wind industry cannot meet burden of proof requiring it to show that no species present is even suspected of being affected by habitat fragmentation.

Need for Risk-Based Analysis

- Formulation seems to set aside risk-based approach in favor of non-deployment of wind farms in the presence of any adverse impacts to any species or habitat.
- This approach combined with adherence to a ‘Precautionary Principle’ (see below) will impede moving a project to Tier 3.
- Documented “concerns” by the Service of adverse effects on wildlife shared with the developer will increase uncertainty making projects more difficult to finance.

Application of a Precautionary Principle

- Invoking a “precautionary principle” which requires that in the absence of full scientific information and in the presence of any risk, the project proponent has the burden of proving there is no risk, does not seem to permit a balancing of species/habitat and energy concerns.
- This precludes or devalues consideration of relative benefits of renewable energy generation and its positive impact on energy security and supply, GHG emissions

and the environment, as the Service carries out its mandate to protect species and habitat.

“Significant Adverse Impact” vs. “Adverse Impact”

- The wind industry, and any business accountable to shareholders and/or investors has to justify the cost of the measures it takes.
- Therefore, the Service should focus on adverse impacts that are clearly “significant.” This difference in meaning has clear implications and should be addressed. The great majority of projects will have no significant adverse impact to species populations.

Coordination Should Involve More Decision-Making Authority for Wind Developers

- Frequent full coordination proposed by the Service, and the manner in which such coordination would take place, is not compatible with a wind project development timeline. Industry needs to better explain how basic project development occurs and the role of outside financing.
- Guidelines suggest that enforcement assurances may not stand if, for example, coordination with the Service did not occur prior to incurring financial or property commitments. This would cause delay and uncertainty, negatively impacting project financing.
- Having the Service review and approve what developers are doing at each stage is not a good use of their resources. It is better for industry to document what it is already doing against clear Guidelines.

- Developer communication with the Service should be sufficiently flexible so the developer need not show at every stage that it has followed advice from the Service to the maximum extent practicable.

Adaptive Management

- Service elevates the concept of “adaptive management” from a little-used tool where there are potentially high levels of impact or uncertainty, into a tool the use of which is presumed for every project.

Noise

- The science behind noise impacts to species is at best inconclusive. Acoustic sensitivity is unknown for most species and we question the level of effort that would be required to determine such sensitivity.

Enforcement Assurance

- Enforcement assurance provides the major incentive for wind energy businesses to follow the Guidelines.
- Without clarity on what behavior will provide assurance against enforcement, investment in renewable energy production is likely to migrate to other opportunities.
- Industry needs assurances requirements that are reasonable, based on risk and a balancing of conservation benefits and costs to a fledgling low carbon business.

Phase-in Period; Grandfathering

- How can developers “comply” with the guidelines and achieve enforcement assurances if the guidelines begin to impact the industry immediately and there is no grandfathering?
- Existing and planned projects need time to adjust if investment flows are to continue uninterrupted. We heard from the Service during the April 27, 2011 FAC meeting that there is no intention to have existing projects “go back to square one.” This needs clarification.

II. Introduction

Set forth below are the comments of BP Wind Energy North America Inc. (“BP Wind Energy”) on the draft Land-based Wind Energy Guidelines (the “Guidelines”) made available for public comment by the Department of Interior (the “Department”), U.S. Fish and Wildlife Service (the “Service”) on February 18, 2011.

The Guidelines are described in the Notice of Availability published in the Federal Register as “intended to supersede the Service’s 2003 voluntary, interim guidelines for land-based wind development.” BP Wind Energy agrees with the service that accelerated development of land-based wind energy generation project development across many parts of the United States makes it important at this juncture to revisit and reconsider the interim guidelines and develop guidance that can both further promote wind energy development and allow the Service to fulfill its statutory mandate to protect, conserve and enhance species and habitat.

We hope and expect that the iterative process the Service envisions will allow for a reasonable balancing of two key Administration goals which the President has articulated and should be compatible: Species and habitat protection, conservation and enhancement, and continued development of viable forms of renewable energy that, over time, can begin to supplant America’s use of non-renewable sources in the face of rapidly escalating energy demand. We understand that the Service has what it refers to as a “co-

equal” responsibility for conserving species and habitat. The challenge continues to be to define and agree upon a definition of “compatibility” when weighing two key national policy goals and of ensuring that all interests are fully represented in the process.

The Notice of Availability refers to the Wind Turbine Advisory Committee (the “FAC”) formed by the Secretary of the Interior in March, 2007 pursuant to the Federal Advisory Committee Act and that submitted final recommendations on March 4, 2010. It is important to note that the wind energy industry came willingly to the table. BP Wind Energy, though it was not a member of the FAC, kept abreast of the Advisory Committee’s work and signed a letter in support of its recommendations, dated December 22, 2010, drafted by the American Wind Energy Association (AWEA) of which it is a member. We supported the view that the recommendations reflected a workable compromise among all of the participants and the stakeholders whom they represented. For example, one important collaborative aspect of the Committee’s work was that scientists working on behalf of an array of interest groups debated the conclusions of research papers cited in the Guidelines. Such a peer review process is likely to yield more nuanced and accurate statements regarding the current state of the science, not wholly reflected in the Guidelines as they now appear. Therefore, we had hoped the recommendations would be taken in their totality by the Service. By changing, omitting or adding key words and phrases, what has emerged is a quite different set of guidelines with a different meaning and intention at critical points. It will be challenging for the wind generation industry to abide by them and continued wind energy development will be seriously affected. Nevertheless, we are satisfied, as the Notice states, that not only were the FAC recommendations taken fully into account by the Service along with input from other stakeholders not on the FAC, but that the FAC’s recommendations served as “a basis” to develop the Service’ draft. We appreciate also that the Guidance was the subject of a detailed interagency review by environmental agencies as well as the Office of Management and Budget.

The Service and the Department has made a good faith effort based on their current understanding of the U.S. wind industry and its impact on species and habitat to develop

guidelines that meet their statutory mandate while still promoting wind energy development. That said, we do not believe the Guidelines in their present form can promote achievement of the nation's dual policy goals of achieving 80 percent renewable energy use by 2035 and continued protection, conservation and enhancement of species and habitat. More work needs to be done by the Service and all the stakeholders involved to develop workable guidelines. BP Wind Energy would like to offer its assistance and experience as a successful wind energy developer to the Service and the Department to help refine the Guidelines moving forward so they can effectively serve as a manual for use by both developers and the Service. Developers ought to be able to adhere to a set of clear, unambiguous, and science-and risk-based guidelines that also provide them with flexibility where the nature of their business demands it. Voluntary adherence to the guidelines should be regarded by the Service as evidence of due care with respect to avoiding, minimizing and mitigating significant adverse effects to legally protected species.

Therefore, we recommend that once public comments received by May 19 have been taken into account by the Service and the Department, and The Wildlife Society has completed its peer review, these dual policy objectives could each best be served if the Guidelines, amended as the Service considers appropriate in light of comments received, were then published for purposes of eliciting a second set of public comments over the course of 30 to 90 days, that would also be taken into account prior to their finalization.

III. How Uncertainty Over Guideline Implementation Affects Financing

BP Wind Energy is in the business of wind energy development, generation and operation. BP's wind energy business is not a public relations exercise and therefore an acceptable level of return on any investment it makes is always required.

By the end of 2010, BP Wind Energy will have built its wind business in the U.S. from zero megawatts (MW) in 2005 to more than 1,300 which is enough clean, renewable

electricity to power a city the size of Washington, D.C. It has invested just under \$3 billion in building its business. It pays some 400 American landowners approximately \$6 million in royalties each year. These numbers will only increase if its wind portfolio can be expanded.

To date, BP Wind Energy has employed more than 2,900 U.S. workers to build its wind farms but has also created a smaller number of permanent, skilled and high-paying jobs connected with the ongoing operation and maintenance of its sites. BP Wind Energy pays over \$9 million each year in property taxes to communities in which it is located, a number which will only increase if it is able to exploit its development opportunities.

Within BP, projects must compete for capital investment from the BP Group. As any large, diversified company will attest, clear regulations, consistently applied, are critical for companies and lenders to be able to evaluate their risks and costs. External debt providers obtain no upside and therefore will accept very little risk, especially risks that can sink a project. Therefore, if there is any possibility of fines, operational curtailments (or even worse, permanent shutdown) or physical changes to a plant after construction is completed, lenders will not take that risk. This could result in additional reserves being required, including requirements for parent guarantees, a reduction in amount of debt loaned, or even a refusal to lend.

BP creates joint ventures to share risk and obtains third party financing for wind projects in conformity with common industry practice. Joint venture partners require certainty that a project is well developed, and in compliance with all regulations prior to joining. Because the Migratory Bird Treaty Act (MBTA) is a strict liability statute there is currently no mechanism to obtain legal protection from unintentional, incidental take of migratory birds. Therefore, lenders and partners alike will rely on adherence to any guidelines the Service issues to avoid running afoul of the MBTA. Any uncertainty over what constitutes adherence and whether adherence provides a “safe harbor” will restrict BP’s ability to attract partners. In addition, all participants in the market are looking for certain minimal rates of return and additional costs will reduce those returns making it

more difficult to partner. Lenders need to be able to be certain, before they lend, that projects are not subject to later sanctions or changes after construction is completed. Thus latitude in interpreting the Guidelines or uncertainty in application or understanding of the Guidelines may preclude lending or negatively impact terms.

Post-completion operational changes for already-operating projects will impose large financial problems as well. Revenue will be limited in a way that was not considered during the original project financing. Contractual violations by the project owner in his agreement with the power purchaser may also occur if the turbines cannot generate at contemplated levels.

IV. The Impact of Wind Energy Development on the Environment

Harvesting electricity from the wind has been undertaken increasingly by U.S. business organizations seeking to take advantage of a growing interest in low-carbon energy generation that could, over time, begin to alter the nation's energy portfolio by displacing other forms of power generation having a larger environmental impact. Consumers are willing to pay a competitive price for low-carbon power if it contributes to increasing the domestic supply of energy and reduces greenhouse gas emissions and contributes to the protection of biodiversity which we understand to be an overarching concern of the Service and the Department. In operation, wind power generates no air pollution or hazardous wastes and uses almost no water, so natural resources are actually conserved and protected. Though wind energy generation impacts birds and bats and other species, the relative impact of wind development as a cause of species mortality or habitat destruction or fragmentation is small when compared with other energy generation sources, and smaller still when compared with all of the other anthropogenic causes of species mortality and habitat impact. While this in and of itself should not diminish the desire of the Service and the Department to minimize the impacts of wind towers and turbines, we think it should affect the relative intensity of their focus on this industry. The Service appears to have given little weight to the beneficial impacts the industry bestows upon the larger environment. Similarly, there appears little recognition of the wind

generation industry as a leader in the production of low carbon energy in a sustainable manner and the value of such an endeavor.

V. BP Wind Energy and the Industry Have Been Pro-Active in Dealing With Wildlife and Habitat Issues

The guidelines seem designed to address a worst case scenario when the great majority of wind projects present little or no conservation challenge. Though the wind energy industry's impacts on wildlife and habitat are relatively minor when compared with other causes of species mortality and habitat destruction, the industry has proactively taken action on many occasions to address concerns expressed by national and local environmental and conservation groups and others. In part this is because historically, wind energy development grew out of environmental concerns and the industry viewed itself not as a cause of, but rather as an integral part of, the solution to conservation and environmental challenges. Many of wind energy's producers have in fact been quick to address species and habitat issues that were raised and that the industry has needed to consider. In connection with every wind farm that BP Wind Energy develops, constructs and operates, it voluntarily and pro-actively engages in continued outreach with stakeholder groups concerning a wide array of possible environmental impacts. BP Wind Energy has even forgone further development at some sites because they involved real risks to sensitive species and habitats.

There are a number of organizations that BP Wind Energy has either helped to form or joined as a part of its species and habitat protection efforts. For example, BP Wind energy was a founding member of the American Wind and Wildlife Institute ("AWWI") in 2007 and sits on its Board of Directors and most major Committees of the Board, together with many of its peer energy producers and several of the nation's foremost environmental and conservation membership-based organizations. AWWI has become a primary source of wind farm siting solutions that promote renewable energy development while avoiding or minimizing as much as possible the impact on wildlife and wildlife habitat. It is precisely this balance achieved at AWWI in the service of the dual

objectives of species conservation and renewable energy production, that we hope may be duplicated as the Service develops the Guidelines.

Other examples of BP Wind Energy's participation in environmental collaborative efforts and initiatives include:

Bats and Wind Energy Cooperative (BWEC)

National Wind Coordinating Collaborative (NWCC)

Grassland and Shrub Steppe Species Collaborative (GS3C)

Midwest Region Wind Energy Habitat Conservation Plan

Great Plains Wind Energy Habitat Conservation Plan

Freedom to Roam (in collaboration with BP America)

VI. "Getting it Right" From the Outset; The Content of the Guidelines Will Deeply Impact Future Wind Development

BP Wind Energy has always understood that the Guidelines would be voluntary in nature (though on Federal land, it appears likely and it has been our experience that Federal Agencies would recommend their use and insist upon adherence). Still, it is important for the Service and the Department to understand and appreciate that once these guidelines, intended to offer enforcement assurance, are finalized, major wind producers seeking joint venture partners and bank financing for projects will come under enormous pressure to adhere to whatever the Guidelines contain whatever the cost of doing so. Potential investors will avoid projects that do not carry enforcement assurance and will assume that without it, a project is vulnerable to closure at any time. In an economic climate where capital is scarce and wind energy must vie with many other investment opportunities, any unduly expensive requirement not clearly tied to science, actual risk and the clear benefit it will provide in achieving a conservation purpose, places the industry in a difficult place. It must invest beyond its ability to do so in a conservation regime that is overbuilt in order to attract the outside investment capital needed for its survival.

This raises the cost of capital beyond the point where major developers who could invest elsewhere will be attracted to renewable energy development or can justify such investments to their shareholders and investors. This nascent industry is already impacted by many potential siting and other impediments. These include antiquated transmission rules, lack of sufficient transmission and uncertainty over continuation of tax benefits and other government initiatives that promote renewables, to name only some of the policy challenges the industry now faces. Therefore, concern over the continued viability of wind generation in the U.S. is not misplaced. We raise these points because it is the clear intent of the Administration and the leadership of the Service and Department that alternative forms of energy be encouraged in so far as consistent with their statutory mandates. We see the Guidelines as going beyond the Service's mandate. Robust wind development is and can be made compatible with adherence to existing law without increasing costs to the point that it no longer can be viable. Therefore, the incentive should be great on the part of all Stakeholders to bring the guidelines to a place where both policy objectives may be achieved.

VII. 3 Years of Preconstruction Studies/ Minimum 2 Years of Post-Construction Studies

Three years of pre-construction data is not necessary in many circumstances and therefore, we have concern over such a period as a default preference. We would like the service to explicitly recognize that there may be cases where a year of monitoring or even no monitoring at all is appropriate or needed. Collected data shows little scientific justification for additional years of study beyond the first year as little of significance is revealed that enhances what may be learned from the data collected during the first year of study. The length of studies should be based instead upon the risk profile of a proposed site and should have a scientific underpinning. We therefore would like to see the Service develop a much more transactional approach, where developers would come to the Service on a case-by-case basis to determine what is appropriate for each site in light of the actual, project-specific risk involved to species of concern. Off-ramps and by-passes are needed where they are indicated. Otherwise expensive and time consuming

studies of questionable value will succeed in doing little more than frustrating viable wind development by adding substantial costs that make the economics of the projects unattractive. A “minimum” of two years of post construction monitoring for sites that are of low-risk likewise will often not be a good use of the limited resources of both wind developers and the Service. Here again, we think the Service should take a case-by-case approach. The focus of the service and its recommendations to the developer should be site-specific and based upon site-specific data and tied to the level of actual risk to species of concern at the site.

VIII. Scope of the Guidelines

Expansion of the scope to include “fish, wildlife and their habitats” and the co-equal treatment of all species by the Guidelines leaves the industry in a difficult position as it cannot provide, nor should it be called upon to provide, equal protection for all species. This would be a complex, time-consuming and expensive task, and to what end? The benefits gained and the knowledge gleaned from expanding review to all species is not clear. We agree with the Wind Turbine Guidelines Advisory Committee (FAC) that given the resources available and the application of any reasonable cost/benefit analysis that the focus must be on “species of concern.” These species are known and for the most part, data regarding such sensitive species are accessible through state and federal agency websites. For example, if, as the Advisory Committee proposed, the concern is habitat fragmentation, then the focus must be on those species formally identified by the Service and the Department as “species of habitat fragmentation concern.” Industry needs to know with some precision what is involved; what is the number of species that are affected. It should not be the role of the wind generation industry to meet a burden of proof that requires it to show that no species present is in any way affected by habitat fragmentation.

IX. Lack of Risk-Based Analysis

It is hard to see how a project could ever be moved from Tier 2 to Tier 3. Developers are urged to “strongly consider” not proceeding with planned projects in the face of opposition from the Service even though it is not necessarily tied to actual risk. A preference is expressed for project abandonment “if [the analysis indicates] a higher probability of adverse effects to fish and wildlife and their habitats...”. This formulation also seems to jettison any sort of risk-based approach by stating a preference for non-deployment of wind farms in the presence of any adverse impacts to any species or habitat. This approach combined with adherence to a ‘precautionary principle’ (see below) will impede moving a project to Tier 3. We also agree that any documented “concerns” by the Service of adverse effects on wildlife shared with the developer will, in essence, remove from the developer a decision on whether to proceed, as such a “kill letter” would inject so much uncertainty as to frequently render the project impossible to finance.

X. Application of a Precautionary Principle

Whenever there is uncertainty as to whether an action has any risk of causing any harm to any species or habitat, the Guidelines squarely places on the developer the enormous burden of proving that its action will cause no harm. After much debate and formation of a sub-committee to consider the issue, the FAC agreed not to incorporate a precautionary principle as the policy filter through which a set of guidelines would be applied.

Invoking a “precautionary principle” which requires that in the absence of full scientific information and in the presence of any risk, the project proponent has the burden of proving there is no risk does not strike the balance that we think is called for in the Guidelines. The United States government, whether in the context of international environmental negotiations or development of domestic laws and regulation, has steered away from a precautionary “principal” because, it has frequently argued, there is no commonly understood definition of such a “principle.” The level of risk acceptable in the absence of full scientific certainty and the burden on the proponent to show the presence of an acceptable level of risk should necessarily be viewed as context-specific. Here, two very important national policies are impacted: species and habitat protection, and

promotion of clean, renewable energy. Adoption of a precautionary principle as set forth in the Guidelines would preclude, as the Government seeks to protect species and their habitat, consideration of other benefits from renewable energy generation. These include helping to secure a domestic supply of energy, reduce greenhouse gas emissions and its beneficial effects on biodiversity. Such an approach could put an end to economic activity around wind power development in the United States. We do not believe this to be the position of the Administration, the Department or the Service.

Moreover, application of a precautionary principle in the absence of scientific knowledge or data showing actual risk conflicts with the spirit E.O. 13563 issued by the President Obama on January 18, 2011. While we understand the Guidelines are not a regulation, each of the principles that the President enunciated are nevertheless germane and the guidelines would benefit substantially from their application. These include: basing regulatory action on the best available science; promoting predictability and reducing uncertainty; adoption only upon a reasoned determination that justify costs; maximization of net benefits (including potential economic, environmental, public health and safety benefits); and specification of performance objectives rather than the behavior or manner of compliance. We think more could be done to ensure that the Guidelines adhere to each of these regulatory principles as articulated by the President.

During the April 27, 2011 public meeting of the FAC, Service officials drew an analogy between hydro power development many years ago and wind power development today. They observed that it was only several generations later that a common understanding emerged concerning the impact of that early hydro power development on salmon and that the Service is determined to prevent similar occurrences in the wind arena. Yet society can only deal with the impacts of wind generation on species and habitat as these impacts become known. Especially given rising domestic energy demand and use, and the relatively low risk that turbines pose in many locations, it seems both unwise as a policy matter but also contrary to other Administration positions that address well understood and known energy risks, to hold off on further wind development until a level

of certainty can be attained with respect to potential but unproven adverse effects on species or habitats.

XI. “Significant Adverse Impact” vs. “Adverse Impact”

The burdens placed on the wind energy industry should be justified in terms of actual risk to habitat and wildlife. Otherwise the benefits achieved will often not be justified by the costs involved. The wind industry, and any business accountable to shareholders and/or investors has to justify the cost of the measures it takes. Insignificant impacts should not trigger the same level of response as major impacts. Indeed, it is difficult to understand why the focus of the Service should be on anything other than impacts that are clearly “significant.” This is not a semantic difference but a difference in meaning with clear implications and should be addressed by the Service. The great majority of projects will not have any significant adverse impact.

XII. Coordination Should Involve Placement of Greater Decision-Making Authority in the Hands of Wind Developers

The frequency with which the Service suggests full coordination and the manner in which such coordination is proposed to be undertaken, each suggest a lack of familiarity with the wind energy business. More clearly needs to be done, including by industry, to explain how basic project development occurs and the role of outside financing. The Service’s formulation suggests that enforcement assurances may not stand if coordination with the Service did not occur prior to incurring financial or property commitments. The delay and lingering uncertainty that would inject into the development process together with a lack of clarity as to why these should be key decision points where direct coordination is required, will negatively impact project financing.

The system could function better if communication with the Service by the developer would be considered sufficient if the developer had considered the Service’s advice as

opposed to having to show that it had followed that advice to the maximum extent practicable. The latter creates a much more formal exercise requiring monitoring and record keeping and injects periods of delay during which the Service, overstretched by such requirements, would likely have to formally respond in writing. A balance on consultation needs to be struck that takes into account both the resources of the developer and the Service. Reasonable timelines are needed within which the Service can be expected to respond a developer seeking input.

XIII. Adaptive Management

We have concern about the Service's elevation in this case of the concept of "adaptive management" from an infrequently-needed or used tool where there are potentially high levels of impact or uncertainty, into a tool the use of which is presumed for every project. It is impossible to know at this point, given the evolving nature of adaptive management use at wind facilities, what the Service might require. Operational adjustments should only be required at facilities where post-construction wildlife data suggests on the basis of elevated risk that adjustments would be wise. This uncertainty will negatively impact the ability to finance projects.

XIV. Noise

The FAC did not recommend noise studies on wildlife and the science on this question is inconclusive. Acoustic sensitivity is unknown for most species and the level of effort that would be required to determine such sensitivity is unwarranted and, in any event, should not be the responsibility of the wind energy industry.

XV. Enforcement Assurance

The principal objective of effective Guideline development is their wide application on the part of the entire wind generation industry. A major incentive for wind energy businesses to follow the Guidelines is provided by the enforcement assurances. In the

absence of clear enforcement assurance, developers will not have an incentive to use the Guidelines. The guidelines are more likely to be followed by industry if there is clarity about what behavior is likely to provide assurance against enforcement and if the behavior sought is reasonable and based on risk and a balancing of benefits to the environment and costs to a fledgling low carbon energy industry. In this way, renewable energy production can proceed without being crippled by a lack of financing because investment has migrated to other opportunities due to lingering uncertainty over the viability of projects that could be enforced against at any time. For example, the value of the assurance should not be called into question if a developer does not approach the Service prior to securing a financial agreement or landowner access agreement. That may not be possible, and the way in which the guidelines are worded creates doubt. We are not sure of the practical implications of any requirement that developers follow the advice of the Service to the maximum extent practicable. That is a very high standard of adherence.

XVI. Phase-in Period; Lack of Grandfathering

The absence of any phase-in period raises the problem of non-compliance by existing projects or projects in long development pipelines that can lead to completion of an operating wind farm, but often do not. How can they “comply” with the guidelines and achieve enforcement assurance if the guidelines begin to impact the industry immediately and there is no grandfathering? Existing and planned projects need time to adjust if investment flows are to continue uninterrupted. We heard from the Service during the April 27 FAC meeting that there is no intention to have existing projects “go back to square one.” This needs clarification.

XVII. Conclusion

Clean air, clean water, prevention of hazardous waste generation and protection of biodiversity from the impacts of greenhouse gas emissions are some of the key environmental and conservation benefits to all species, including human beings, one can

point to when touting the benefits of wind energy generation. Business entities engaged in wind energy development have known from the beginning of the potential impact of that generation on animal species and their habitat. The impacts are real. However, the impacts are also minor when compared with every major source of species mortality and habitat destruction. This does not mean that continued vigilance is not called for, but what is also called for is a reasonable balancing based on hard science and data showing actual risk, of the great interest that the United States has both in protecting wildlife and its habitat and in increasing significantly the amount of clean, renewable energy it produces.

A set of guidelines in the form of a manual or “road-map” should be adopted as quickly as possible. However the Guidelines upon which we are now asked to comment need further work that should be undertaken collaboratively by the stakeholders involved. Apart from the Federal Advisory Committee, we feel there has not been sufficient interaction between the full range of stakeholders and the Service. There are new views and voices at the Service which will be deeply involved and must act as mediator in this process. During the April 27, 2011 public FAC meeting, representatives of the Service acknowledged that while the Service has a full compliment of talented wildlife biologists, it could have benefitted from greater interaction with wind energy business to learn and understanding of business models, and suggested that there should be more opportunities to do that. BP Wind Energy would like to engage directly and offer its resources and experience. Stakeholders should be engaged in developing the training modules the Service develops to instruct their own employees, including at the regional and field levels, and wind developers on their implementation and use.

For each of these reasons, we respectfully suggest that the Guidelines, once revised by the Service to take into account of the comments it receives by May 19, be published and that public comment be sought a second time, as expeditiously as possible, over a 30 to 90 day time frame. Getting it right will be important both for species and habitat protection and for wind energy development and that will be a win-win for the United States and environmental protection.

